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Attorney for Plaintiff(s)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ELEANOR TEDONE,

:

Plaintiff(s),

: 07 Civ. 4111 (WP4) (MDF)

-against-

:

H.J. HEINZ COMPANY, ET AL.,

:

Defendant(s).

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PLAINTIFF'S EXPERT WITNESS DISCLOSURE

SIRS:

PLEASE TAKE NOTICE, that plaintiff, by her attorneys, Jasne & Florio

LLP, and pursuant to the Federal Rules of Civil Procedure hereby sets forth the following

Expert Witness disclosure:

1. Plaintiff intends to call Steve Lerman of SIL Consulting, Inc. as an expert witness.
2. Expert witness is located at 3 Allen Gate, Plainview, NY 11803-6112 Telephone # (516) 433-3412.
3. Attached hereto is expert witness *curriculum vitae*.
4. Attached hereto is a document containing expert witness opinion.
5. Expert witness may introduce the following exhibits at trial:

- a. The bottle in question.
 - b. Photographs from inspection of the bottle.
 - c. The expert witness report.
 - d. An intact bottle of the same type as the bottle in question.
6. Publications by the expert witness is contained within the attached *curriculum vitae*.
7. Expert witness has testified in the following cases in the past 4 years:
- a. Brown v. S.N.E, Holding Corp., Bronx County N.Y. Index# 17080/94
8. Expert witness rate of compensation is \$230.00 per/hr for research and \$290.00 per/hr for appearances and is not contingent nor related to the case outcome.

Dated: White Plains, New York
April 14, 2008



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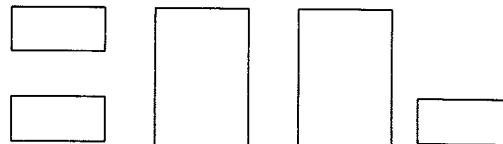
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PRIVILEGED AND CONFIDENTIAL

DATE: April 11, 2008

TO: Hugh Jasne, Attorney for Plaintiff

CASE: Tedone vs. Heinz

RE: Broken Catsup Bottle

PURPOSE: To Explain Various Technical Issues as they Relate to this Case

BACKGROUND

The Plaintiff alleges that she sustained serious and severe lacerations to the hand as a result of a Heinz Catsup bottle shattering in her hand as she was trying to open it.

Mr. Hugh Jasne retained SIL Consulting, Inc., to assist in explaining and clarifying various technical issues regarding this case, specifically to determine the reason the bottle shattered as alleged.

REVIEW OF FACTS

Mr. Steve Lerman of SIL reviewed various records and information including photographs pertaining to the case, supplied by Mr. Jasne. He also examined the fragments of the bottle in question, as well as an unbroken bottle of the same type, which took place in the office of the Defendant's attorney on December 21, 2007

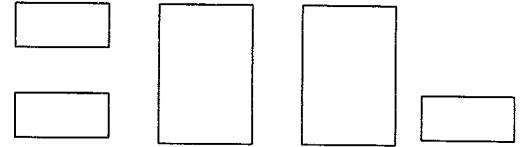
TECHNICAL DISCUSSION

The following technical points will assist in understanding the issues in this case:

- When glass breaks, the resulting fragments often indicate information about the break, e.g., massive impact, local impact, stress breakage, micro-cracking.

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- When glass is chipped or cracked, it will lead to breakage similar to that of impact breakage; the cracking pattern will trace back to the chip/break.
- When glass breaks on impact, it forms a large number of fragments. These fragments are irregular and jagged in shape, and will exhibit irregular ridges on either side of the edge, which may indicate the direction of breakage.
- Stress breakage occurs when the glass was not properly annealed, causing the glass to be under stress along the stress area (not unlike a fault in the earth leading up to an earthquake).
- This type of breakage has three (3) distinct features:
 - Very smooth breakage along the stress area.
 - Smooth, non-irregular, fragments.
 - Little or no fragmentation in the stressed area. Other areas of the artifact may fragment to a greater degree.
- Stress breakage can be initiated with much smaller force than would normally be required to break the glass.
- Glass as thick as the catsup bottle in question (2.5 mm) can withstand a force of 2,000 lb (1 ton).

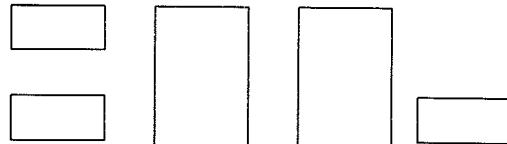
FINDINGS IN THIS CASE

Based on the facts of the case as presented to SIL, we offer the following comments and observations:

- The bottle in question was a small, personal size, catsup bottle, 76 mm tall, 29 mm wide at the top, and 44 mm wide at the base.
- The upper and lower portions of the broken bottle were intact. The cap was still on the upper portion.
- The upper and lower fragments exhibited properties as described above for stress breakage.

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- The Plaintiff applied axial torque to the bottle, which is how torque is applied to remove a bottle cap. Enormous torque would have had to have been applied to break a properly manufactured bottle with no defects. The small size of the bottle furthers the difficulty of applying any force of significant magnitude.
- The cap was still on the bottle, indicating that there wasn't even enough force applied to remove the cap.
- The fracture most likely initiated at the neck of the bottle, since a) stress is usually circumferential, b) there is a higher amount of fragmentation in the middle of the bottle, and c) the bottom fragment is too narrow to have been gripped by the Plaintiff.

CONCLUSIONS

Based on the facts reviewed in this case and our technical knowledge of refractory material science, SIL concludes the following:

- The catsup bottle in question broke because of stress in the area of breakage around the upper portion of the bottle.
- This stress was induced by improper manufacturing, either improper annealing or an equivalent improper practice that either caused the stress, or, more likely, did not relieve the stress.

CLOSING

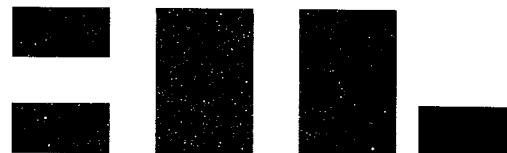
This completes our initial review and discussion of the technical facts of this case. Please advise us if you have any questions or if you need any additional information.

Handwritten signature of Steven I. Lerman.

Steven I. Lerman, M.S., Consulting Chemist
SIL Consulting, Inc.

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PROFESSIONAL ACTIVITIES AND AWARDS

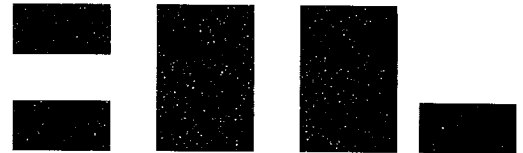
- Quality Systems Auditor under ISO 9000 and ISO/IEC 17025 (RAB #Q02199)
- NIST-NVLAP, A2LA, AIHA, IAS, and API Laboratory Assessor for Laboratory Accreditation Programs
- Past Chairman, ASTM Subcommittee D19.11, Industrial Water
- Fellow, American Institute of Chemists
- Technical Consultant to US Dep't of Commerce, NIST-NVLAP
- Technical Consultant to the Electric Power Research Institute (EPRI)
- Who's Who in the East, 1979
- ASTM Outstanding Service Award, 1988
- ACS Congressional Science Counselor and Short-Course Reviewer
- HUD/OSHA Lead Inspector
- Instructor, Analytical Chemistry and Instrumentation Seminar sponsored by Tall Oaks Publishing
- New York City/State Approved Industrial Hygienist
- Director, NIOSH 582-Equivalent Course given by Senagryph Training Center

EDUCATION

- M.S., Chemistry, 1972, Adelphi University
- B.A., Chemistry, 1965, Queens College, CUNY

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**TECHNICAL PUBLICATIONS AND PRESENTATIONS**COMPUTERIZED CALCULATIONS OF EMISSION SPECTROGRAPHIC ANALYSIS RESULTS

Delivered at the 2nd Annual FACSS Convention, 1975

CONTINUOUS MONITORING OF POWER PLANT PROCESS WATER

Delivered At the 39th Annual Meeting of the International Water Conference, 1978

ANALYSIS OF PROCESS WATER BY ION CHROMATOGRAPHY

Delivered at the 40th Annual Meeting of the International Water Conference, 1979

DETERMINATION OF PCBs IN TRANSFORMER OIL

Delivered at the 32nd Annual Meeting of the Pittsburgh Conference, 1981

Published in American Laboratory, February, 1982

ION CHROMATOGRAPHY USING NON-ISOCRATIC ELUTION

Delivered at the 33rd Annual Meeting of the Pittsburgh Conference, 1982

PERSPECTIVES IN ION CHROMATOGRAPHY

Delivered at the Annual Meeting of the North Jersey Chromatography Discussion Group, 1982 (invited speaker)

STANDARDS FOR INDUSTRIAL WATER

Published in Standardization News, October, 1983

STATISTICS IN THE LABORATORY

Delivered at the 35th Annual Meeting of the Pittsburgh Conference, 1984

ASTM POWER PLANT MANUAL

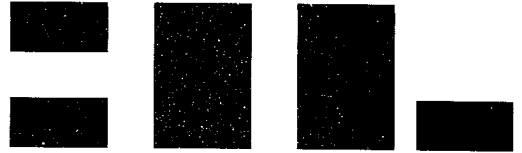
Delivered at the 46th Annual Meeting of the International Water Conference, 1985

THE CHEMISTRY OF HIGH PURITY WATER

Published in UltraPure Water, October, 1988

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**TECHNICAL PUBLICATIONS AND PRESENTATIONS****PERSPECTIVES ON MONITORING FOR TOTAL AND COLLOIDAL SILICA**

Delivered at the Second EPRI Conference on Cycle Chemistry in Fossil Plants, 1988

Published in UltraPure Water, December, 1988

IMPACT AND PAYBACK OF A QA/QC PROGRAM FOR STEAM-WATER CHEMISTRY

Delivered at the EPRI Conference on Measuring Waterborne Trace Substances, 1990

Published in UltraPure Water, November, 1990

MANAGING GC/MS QC DATA

Delivered at the 43rd Annual Meeting of the Pittsburgh Conference, 1992

ALTERNATIVE AND NON-TRADITIONAL TECHNIQUES FOR ANALYSIS OF AIR AND BULK SAMPLES

Delivered at the EPRI/NAC Conference on Asbestos Control and Replacement for Electric Utilities, April, 1992

HIGH PURITY AND PROCESS WATER

Published in Standardization News, April, 1992

ENVIRONMENTAL QC DATA MANAGEMENT

Delivered at the 44th Annual Meeting of the Pittsburgh Conference, 1993

STATISTICAL QUALITY CONTROL TECHNIQUES FOR DUPLICATE QC DATA

Published in The Synergist, October, 1997

ASTM Standards for High Purity Water

Delivered at UltraPure Water EXPO 2000, April, 2000